

(2003) 09 AHC CK 0305
In the Allahabad High Court
Case No : C.M.W.P. No. 1039 of 2003

Sri Ram Gupta

APPELLANT

Vs

Assistant Collector, Trade Tax

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2003) 6 AWC 5015

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : M. Manglik, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned Counsel for the Petitioner and learned standing counsel.

2. The Petitioner has challenged the impugned notice dated 5.6.2003/23.7.2003, Annexure-1 to the petition and prayed for a mandamus restraining the Respondents from recovering the amount in question against the Petitioner who is a Director of the Company against whom there are arrears of Trade Tax regarding which the impugned recovery has been issued.

3. The Petitioner is a Director of a Private Limited Company called M/s. R. G. Oil Private Limited which has its headquarters at Kanpur. There were tax dues against the company in respect of which a citation has been issued vide Annexure-1 to the petition.

4. The Petitioner has filed this petition alleging that the recovery cannot be pressed against the Petitioner but can only be pressed against the assets of the company. He has relied on the decision of the House of Lords in Solomon v. Solomon and Co. Ltd. 1897 AC 12, in which it has been held that a Company is a distinct legal entity separate from its directors and shareholders. He has also relied on various decisions of this Court e.g., Shri Purshottamdas Beriwal v. Dy.

Collector, 1989 UPTC 456 ; G. C. Mehrotra v. Dy. Collector, 1997 UPTC 1217, etc. Hence he prayed that the Respondents be restrained from pressing the recovery against the Petitioner and direct that the Respondents press it only against the assets of the company.

5. We do not agree. The legal principle that a company is a distinct legal entity separate from its directors and shareholders (vide *Solomon v. Solomon and Co. Ltd.*, 1897 AC 12 (HL) , was evolved to encourage business and industry since many businessmen feared to start a new business or venture because if the said business/venture failed (due to competition, recession, etc.) even their personal assets could be attached and sold for the recovery in respect of the dues against the company. Hence this principle was created so as to encourage businessmen to take risks and set up industries and businesses, and it has played a historical role in helping industrialisation. This principle was not made to help tax evaders. As observed by the Supreme Court in *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd.* and another,

The concept of corporate entity was evolved to encourage and promote trade and commerce, but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil.

6. The Principle of lifting the veil of corporate personality has been discussed in *Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others*, ; *Calcutta Chromotype Ltd. v. Collector of Central Excise* AIR 1998 SC ; *New Horizons Limited and Another Vs. Union of India (UOI) and Others*, ; *C.I.T. v. Meenakshi Mills* AIR 1967 SC 819 ; *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, and; *Juggi Lal Kamlapat Vs. Commissioner of Income Tax, U.P.*,

7. In *State of U.P. and Others Vs. Renusagar Power Co. and Others*, the Supreme Court observed:

It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must however, depend primarily on the realities of the situation. The horizon of the doctrine of lifting of corporate veil is expanding.

In *Tata Engineering's* case (supra) the Supreme Court observed that the doctrine of the lifting of the veil thus marks a change in the attitude that the law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.

Thus, the Supreme Court itself has stated that with the passage of time the exceptions to the rule of corporate personality can grow in number to meet the new requirements, and these exceptions have an expanding horizon.

The aforesaid decisions have been followed by this Court in a Division Bench decision in Civil Misc. Writ of 2002, Sanjay Kumar Gupta v. District Magistrate, Fathepur Petition No. 37833 decided 24.9.2002."

8. The doctrine of piercing or lifting of the veil of corporate personality marks a change in the attitude that the law had originally adopted towards the concept of the separate entity or personality of the Corporation as held by a Division Bench of this Court in Writ Petition No. 382 of 2003, Naresh Chander Gupta v. District Magistrate, Etah and others, decided on 13.3.2003. A large number of decisions of the Supreme Court on the point have been elaborately discussed in the aforesaid decision and hence we are not repeating the same. We fully agree with the reasoning in that decision.

9. The decisions relied upon by learned Counsel for the Petitioner are distinguishable because they have not referred to or dealt with the principle of lifting the veil of corporate personality. Moreover, in the present writ petition the Petitioner has deliberately not mentioned whether there are any assets of the company against which the impugned recovery can proceed. He has also not mentioned who really controls the company. In the absence of these details, we can reasonably assume that the assets of the company have been diverted or siphoned off by the Petitioner for his own benefit, and has left only a shell. Tax dues have to be paid, and we will not permit the use of the principle of corporate personality to help tax evaders. Writ is a discretionary remedy, and we will not exercise our discretion to help tax evasion on the basis of technicalities. Following the decision of this Court in Naresh Chander Gupta's case (supra), and the other decisions referred to above this petition is dismissed.